Supreme Court, U.S.
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No. 01-631

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

UNITED STATES OF AMERICA, Petitioner

v.

CHRISTOPHER DRAYTON and
CLIFTON BROWN, JR., Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF

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November 28, 2001

QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS HAS ADOPTED A *PER SE* RULE OR HAS APPLIED THE TOTALITY-OF-THE-CIRCUMSTANCES TEST APPROVED IN FLORIDA V. BOSTICK, 501 U.S. 429 (1992)?

TABLE OF CONTENTS

QUESTION PRESENTED i

ARGUMENT 1

A. The Court of Appeals' Decision is Entirely Consistent With This Court's Precedent. 1

CONCLUSION 1

TABLE OF CITED AUTHORITIES

Florida v. Bostick, 501 U.S. 429 (1992) i

United States v. Cofield, 2001 U.S. App. LEXIS 24393 (11th Cir. Nov. 14, 2001) 1

ARGUMENT

A. The Court of Appeals' Decision is Entirely Consistent With This Court's Precedent.

As supplemental authority for its argument that the court of appeals has not erected a *per se* rule that consent to a warrantless search is involuntary unless law enforcement officers first advise the defendant of the right to refuse consent (Respondent's Brief in Opposition at 11-14), Respondents cite the intervening decision in United States v. Cofield, No. 00-14689, 2001 WL 1422144, 2001 U.S. App. LEXIS 24393 * 8 (11th Cir. Nov. 14, 2001) (reversing the district court's granting of motion to suppress, considering *inter alia* in determining the issue of abandonment the fact that "there [were no] other conditions that would have led Cofield to believe that he was not free to refuse consent").

CONCLUSION

Because there is no conflict between the decision below and precedent of this Court, or between the circuits on this issue, the petition for writ of certiorari should be denied.

Respectfully submitted,

GWENDOLYN SPIVEY
Attorney for Respondent Drayton

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CERTIFICATE OF SERVICE

I CERTIFY, pursuant to Supreme Court Rule 29.5, that on this 28th day of November, 2001, a true copy of the Respondents' Supplemental Brief was mailed in an envelope to the Office of the United States Attorney, 111 N. Adams Street, 4th Floor, Tallahassee, FL 32301; mailed and faxed to the Office of the Solicitor General, Room 5712, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001, Tel. (202) 633-2201 (For

Respondent); mailed to Respondent Brown's attorney, Mr. Steven Seliger, P.O. Box 324, Quincy, Florida 32353-0324; and mailed to Respondents, Mr. Christopher Drayton, 16000 Bunche Park School Drive, Opa Locka, Florida 30054, and Mr. Clifton Brown, Jr., 19220 NW 37th Avenue, Miami, Florida 33056.

All parties required to be served have been served.

Undersigned counsel represents Respondent in this action as a continuation of a previous appointment pursuant to the Criminal Justice Act, Title 19 U.S.C. § 3006A.

I further certify, under penalty of perjury, that the foregoing is true and correct.

Executed on November 28, 2001.

Respectfully submitted,

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